

Nebraska Technologies &) FORMAL COMPLAINT No. 1277
Telecommunications, Inc.,)
)
Complainant,)
) FINDINGS ENTERED AND
) ORDER ENTERED
vs.)
)
Aliant Communications Company, dba)
ALLTEL,)
)
Respondent.) Entered: May 2, 2000

BY THE COMMISSION:

On January 31, 2000, Nebraska Technologies & Telecommunications, Inc. (NT&T) filed a formal complaint with this Commission against Aliant Communications Company, dba ALLTEL (Respondent or ALLTEL), alleging that ALLTEL failed to comply with the terms of voluntarily-negotiated Service Resale Interconnection Agreement (Agreement) pursuant to Section 252(a) of the federal Telecommunications Act of 1996. Notice of the formal complaint was sent to the respondent via certified mail on February 2, 2000.

Specifically, NT&T alleges that ALLTEL is in noncompliance with those parts of the agreement which require ALLTEL to provide NT&T with end user/customer service records and related information within the one business day requirement set forth in the agreement and that ALLTEL has refused to process local service requests within the five business day requirement as required by the agreement. NT&T further alleges that ALLTEL's failure to honor the terms of the agreement as specified are dilatory and anti-competitive and in violation of the rules of this Commission, state law, the federal Telecommunications Act (the Act) and the express terms of the agreement.

This Commission held a hearing on the formal complaint on March 14, 2000. The parties were notified of the hearing by this Commission via first-class mail sent on February 9, 2000. The complainant is represented by Mark Fahlesen and Tim Clare. The respondent is represented by Paul M. Schudel.

FINDINGS

The contract between ALLTEL and NT&T provides specific time periods for ALLTEL to comply with customer record requests and for migration orders from NT&T. The evidence demonstrates that the backlog of orders experienced by NT&T as a result of ALLTEL delays is considerable. These delays have caused NT&T significant effort, expense and apologies to their customers for the delays in service and billing. The testimony indicated that NT&T, a competitive

local exchange carrier, has lost more than 1,000 customer lines due to delay of information and migration from ALLTEL.

It should be noted for the record that a similar formal complaint, docketed at FC-1271, was filed against ALLTEL by NT&T in August 1999. That complaint was dismissed just prior to the scheduled hearing on the complaint in September 1999 after a Statement of Satisfaction was entered into the record by NT&T.

At the March 14 hearing on this formal complaint, the parties entered as Exhibit No. 4 a Joint Stipulation (Stipulation) in which the parties agreed to, among other provisions:

A) Meet via weekly telephone calls at the request of either party, to discuss provisioning, billing and other issues arising out of their interconnection agreement; meet in person, at the request of either party, at least once a month with these calls and meetings to continue until this formal complaint is dismissed;

- Within five business days of complainant's submission of
 - a Local Service Request (LSR), the respondent must inform
 - NT&T in writing of any errors, omissions or deficiencies
 - in the LSR that prevent timely processing;
-
- A series of requirements governing firm order commitment
 - and jeopardy notices including: NT&T will not submit an
 - LSR until the sixth business day after NT&T has requested
 - the customer's service records; all LSRs submitted to
 - ALLTEL will include a due date to process the LSR and
 - convert the end user/customer, provided that the due date
 - provides ALLTEL with five business days to process the
 - LSR and convert the customer; cessation of billing by
 - ALLTEL of a customer converted; requiring ALLTEL to notify NT&T in writing if an order
 - cannot, because of unique
 - or extraordinary circumstances, complete an LSR within
 - the five business days by issuing a jeopardy notice and,
 - then, setting a firm due date for that order; cessation
 - of billing by ALLTEL of a jeopardy order upon the expiration of the firm order commitment date
 - regardless of
 - whether ALLTEL has converted the customer; a requirement
 - that ALLTEL process all LSRs and conversions in a timely
 - and nondiscriminatory manner; NT&T cannot intentionally

- hold LSRs; and a commitment by ALLTEL to continue to work
- on their operating systems in order to expedite LSR
- processing.

- NT&T will provide ALLTEL with 7- and 30-day forecasts of
- anticipated LSR submissions and update those forecasts on
- a weekly basis.

- On a biweekly basis, the parties shall mutually submit a
- Statement of Compliance to this Commission detailing
- ALLTEL's compliance or noncompliance with the joint
- stipulation commencing with reporting on March 17, 2000,
- and continuing on a biweekly basis until ALLTEL's compliance has been
- achieved for six
- consecutive biweekly
- periods; if a noncompliance occurs, the calculation for
- the six consecutive reports begins anew. Upon successful
- completion of the required six-consecutive biweekly
- reporting, the complainant will file a motion to dismiss
- this formal complaint without prejudice.

Under the terms of the stipulation, it is entirely possible that the "clock" measuring compliance with the terms of the stipulation may be "restarted" a

number of times, even indefinitely.

This can occur by compliance of the parties for fewer than the six reporting periods. These calculations begin anew every time there is a break in the period of compliance. The Commission further notes that even a successful six-consecutive biweekly reporting which results in the dismissal of this complaint could be followed by renewed noncompliance resulting in, we presume, an additional filing of a new formal complaint.

The Commission finds that the stipulation described above should be approved in accordance with our findings contained herein where not directly contradicted with these findings.

The stipulation between the parties envisions a succession of reports of compliance or noncompliance by the parties being filed with this Commission. The Commission notes, for the record, that there have been no fewer than three filings with this Commission noting that the parties, to date, remain in compliance with the

provisions of the stipulation.

We disagree, however, that any tolerance of noncompliance should be allowed. Pursuant to Neb. Rev. Stat. § 75-109 (Supp. 1999), the Commission has jurisdiction over interconnection agreements between telecommunications carriers which authority is to be "broadly construed." The evidence heard by this Commission regarding ALLTEL's noncompliance, its delays and its held orders, represent inexcusable behavior of an incumbent toward an existing competitive local exchange carrier. This Commission has been charged with ensuring compliance with approved interconnection agreements. According to the evidence adduced, it would be fair to say that the behavior of ALLTEL as an incumbent local exchange carrier is unacceptable in light of the mandates of Section 251 of the federal Telecommunications Act of 1996 and our responsibilities as outlined by § 75-109.

ALLTEL argued in the hearing that some delays were inevitable as they transition from a monopolistic to a competitive environment and that they are unaware of everything necessary in order to comply with those conditions. This statement flies in the face of facts that ALLTEL exists as a competitive local exchange carrier in other parts of the state. In short, as a competitor themselves, ALLTEL should inherently know the needs of a competitive carrier and cannot be excused from proper provisioning of services to its wholesale customers.

While this Commission normally accepts entered stipulations of opposing parties in dockets before the Commission, this particular stipulation is unacceptable in that it provides for a possible scenario in which the Commission accepts a never-ending series of reports from the opposing parties detailing compliance and non-compliance. This stipulation calls for a new "probationary" period after each incident of noncompliance by one of the parties to the agreement. Such a provision removes the Commission from its duty to consistently enforce the provisions of approved interconnection agreements. The proper role of this Commission, using its quasi-judicial oversight, is to enforce interconnection agreements and we will not subrogate this responsibility to competing carriers, especially in light of their unique relationship (competitor/customer). Otherwise, the parties would be allowed to strike an agreement which would not serve the public interest.

We have already discussed the harms possible to competitors for held and delayed orders by an incumbent local exchange carrier. The experiences of NT&T only stand to confirm those conclusions.

Accordingly, this Commission, while accepting most terms of the stipulation between the complainant and the respondent, does not accept the condition of the stipulation which provides for "restarts" of the "probationary" period. This provision is unacceptable and, we find, is not in the

public interest. Therefore,
we find that a hearing should be held no later than June 30, 2000,
to determine if the initial complaint filed should be upheld or
denied.

This Commission finds that, regardless of the reports of compliance or
noncompliance
received pursuant to the stipulated agreement between the parties, both
parties should be ready to
come
before this Commission no later than June 30, 2000, for a determination by
this Commission of
the level of compliance by the parties with its interconnection agreement.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that
the
stipulation entered into by the parties as
recorded in Exhibit No. 4 should be, and is hereby approved, except
as contrary to our findings herein and conditioned with our finding
that the parties report back to this Commission no later than June
30, 2000, ready to discuss the full measure of each party's
compliance with its interconnection agreement and to be ready to
show why this formal complaint should not be sustained or
dismissed.

MADE AND ENTERED in Lincoln, Nebraska on this 2nd day of May,
2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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